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12	UNITED STATES DISTRICT COURT	
13	NORTHERN DISTRICT OF CALIFORNIA	
<ul><li>14</li><li>15</li></ul>	OAKLAND DIVISION	
16	SECURITIES AND EXCHANGE COMMISSION,	Case No. 4:20-cv-08238-JSW
17	Plaintiff,	
18	VS.	SECURITIES AND EXCHANGE COMMISSION'S REPONSE TO ORDER TO SHOW CAUSE
19	BENJA INCORPORATED,	
20	Defendant.	
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The Plaintiff Securities and Exchange Commission ("SEC") hereby responds to the Court's Order (ECF 24) entered February 5, 2024 to show cause why this case against the remaining party, Benja Incorporated ("Benja"), should not be dismissed.

The SEC filed this case against Benja and its founder, Andrew Chapin, but as described in the Court's Order, the Court entered final judgment against Chapin, by his Consent, in April 2022, leaving Benja as the sole defendant.

Benja filed for Chapter 11 bankruptcy protection in October 2020, and its case was converted to a Chapter 7 liquidation in December 2020 and a Chapter 7 trustee (the "Trustee") was appointed. *In re Benja Incorporated*, Case No. 20-30819-DM-7 (U.S. Bankr. N.D. Cal.). To limit expenditures of limited assets, the Trustee informed the SEC, and the SEC informed the Court in its Case Management Statement, that the trustee did not intend to actively litigate the SEC's case against Benja. ECF 16. In response to the Case Management Statement, the Court issued the Scheduling Order, referenced in the Court's February 5th Order, which set the pretrial schedule. ECF 17. Within months of the Scheduling Order, the SEC filed the proposed Final Judgment as to Defendant Chapin, which the Court entered on September 1, 2021. ECF 21. As a consequence, the SEC presumed that the dates contained in the Scheduling Order were vacated, as those dates appeared to us to apply to the litigation against Chapin. However, we should have informed the Court of our understanding and sought the Court's further guidance.

In the meantime, the SEC remained in contact with the Trustee in the bankruptcy case, in order to most efficiently protect the SEC's claim for "disgorgement" in this case. Further, the SEC filed a proof of claim in Benja's bankruptcy case, as described below. The SEC claims in this action that Benja obtained ill-gotten gains from investors who were defrauded by Benja's founder, Chapin. Under these circumstances, an important remedy sought in this case is disgorgement by Benja of ill-gotten gains that would include the amounts collected wrongfully from investors. If the SEC were to recover such a judgment, it would likely seek to distribute money collected pursuant to that judgment to harmed investors. The SEC filed a claim in Benja's bankruptcy case to preserve the ability to collect on any disgorgement order obtained here.

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Currently pending in Benja's bankruptcy case is the Trustee's motion to place investors and 1 2 other creditors on equal footing for purposes of distribution. If granted by the bankruptcy court, the trustee's motion to allow such treatment would permit for a more direct, but still fair, compensation of harmed investors through the Chapter 7 liquidation. Such treatment would also pave the way for the SEC to consider withdrawing its claim in both the bankruptcy action, and against Benja in this case, since the purpose for our claims in this action against Benja would be largely accomplished. The hearing on the Trustee's motion is scheduled in the bankruptcy action for March 15, 2024, and briefing is scheduled to be completed by March 8. The SEC thus proposes that the Court provide the SEC approximately 90 days, until May 13, 2024, to report back to the Court as to the status of the bankruptcy case, and the SEC's further steps, if any, against Benja. If the Trustee's motion is resolved before then, the SEC will so inform the Court and present its proposal for resolution of the remaining claims. Counsel for the SEC has shared this statement with counsel for the Trustee, who has informed us that he agrees with the substance of our response and with the SEC's above proposal to the Court. 16 Respectfully submitted, 18 DATED: February 20, 2024 /s/ Susan F. LaMarca Susan F. LaMarca Attorney for Plaintiff SECURITIES AND EXCHANGE COMMISSION

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